

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Copyright Rightsholder Identified in Exhibit 1,)	
)	
)	
Plaintiff,)	
)	Case No. 1:23-cv-04507
v.)	
)	Dist. Judge Matthew F. Kennelly
The Partnerships and Unincorporated Associations Identified on Schedule A,)	
)	Mag. Judge Gabriel A. Fuentes
)	
Defendants)	

Plaintiff's Motion for Electronic Service of Process Pursuant to Fed. R. Civ. P. 4(f)(3)

NOW COMES Copyright Rightsholder Identified in Exhibit 1 of the Complaint ("Plaintiff"), by and through his undersigned counsel, and pursuant to Federal Rule of Civil Procedure 4(f)(3) requests this Court's authorization to serve process by electronically publishing a link to the Complaint, the Temporary Restraining Order, and other relevant documents on a website and by sending an e-mail, to the e-mail addresses identified and provided for Defendants by third parties, that includes a link to said website. Plaintiff submits that providing notice via electronic publication and e-mail in this way, along with any notice which Defendants will also receive from Amazon, eBay, and their respective payment processors, is reasonably calculated under all circumstances to best apprise the Defendants in this case of the pendency of the action and afford them the best opportunity to present their objections.

Electronic service is appropriate and necessary because these Defendants in this case, on information and belief: (i) have provided no contact whatsoever, or incomplete and/or not readily verifiable physical address information in their registrations for the Defendant Internet Stores, in order to obfuscate their locations and avoid liability for their unlawful conduct; and (ii) rely almost exclusively on electronic communications to communicate with their third-party service providers

and customers, demonstrating the reliability of this method of communication by which Defendants may be apprised of the pendency of this action. *See*, Declaration of Adam E. Urbanczyk at ¶ 2. Moreover, Amazon and other e-commerce storefront accounts are very often sold or transferred from the identified registered party to a second party who is not identified in the account information. *Id.* At ¶ 4. Authorizing service of process via e-mail and electronic publication will benefit all parties and the Court by ensuring that Defendants receive the most-prompt notice of this action, thus allowing this action to move forward expeditiously. Absent the ability to serve Defendants in this manner, Plaintiff will almost certainly be left without the ability to pursue a final judgment.

Defendants accepting Amazon Pay, PayPal, and other payment processor accounts must provide a valid e-mail address to customers for completing payment. *See*, Urbanczyk Decl. at ¶ 2. It is necessary for merchants, such as Defendants, who operate their Defendant Online Stores entirely online, to visit their Defendant Online Stores to ensure they are functioning and to communicate with customers electronically including, necessarily, via email.

As such, it is far more likely that Defendants can be served electronically than through physical or other traditional service of process methods. Defendants must invariably provide an e-mail address to third-party online marketplace platforms such as Amazon and eBay when registering their accounts. *Id.* At ¶ 3. Moreover, unlike an e-mail address, which is typically verified by the third-party online marketplace platforms, no verification typically occurs for physical addresses which the registrant may provide. *Id.* Because an e-commerce store operator can input any physical address, and because on information and belief many items are dropshipped from third-parties and not originating from the Defendants themselves, such addresses are very often false and/or are not where the e-commerce store operator is located, including because product returns are not a

consideration. Id. As such, even if a physical address is available, it is not a reliable means for identifying and locating Defendants. Id.

Federal Rules allow this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. Fed. R. Civ. P. 4(f)(3); Gianni Versace, S.P.A. v. Yong Peng, et al., No. 18-cv-5385 (N.D. Ill. Feb. 27, 2019), *citing*, Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in Rio Properties held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” Id., at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. Id.

A number of Courts, including the Northern District of Illinois, have held that alternate forms of service pursuant to Rule 4(f)(3), including e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” Id. at 1018; *See also*, Deckers Outdoor Corp. v. The P’ships and Unincorporated Assocs. Identified on Schedule “A”, No. 15-cv-3249 (N.D. Ill. April 21, 2015) (unpublished) (order granting Ex Parte Motion for Temporary Restraining Order, which included permission to serve electronically).

Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). Rio Properties, 284 F.3d at 1014-15. As the Rio Properties Court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. Id., at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. Id. Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international defendant may be served. Id. Likewise, Courts have confirmed that the

Hague Convention does not displace Rule 4(f)(3). *See, Nagravision SA v. Gotech Int'l Tech. Ltd.*, 882 F.3d 494, 498 (5th Cir. 2018) (“Overlooking Rule 4(f)(3) entirely, Gotech argues that the service did not comply with the Hague Convention and Rule 4(f)(1). This argument misses the mark because service was not effected pursuant to the Hague Convention, and that agreement does not displace Rule 4(f)(3).”).

The People’s Republic of China is a signatory to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the “Hague Convention”). Urbanczyk Decl. at ¶ 4. According to Article 1 of the Hague Convention, the “convention shall not apply where the address of the person to be served with the document is not known.” *Id.* United States District Courts, including Courts in this District, routinely permit alternative service of process notwithstanding the Hague Convention. *See e.g., Gianni Versace, S.P.A. v. Yong Peng, et al.*, No. 18-cv-5385 (N.D. Ill. Feb. 27, 2019) (“Nor must Versace attempt service by contacting the Chinese Ministry of Justice, as suggested by [defendant]. The plain language of Rule 4 requires only that service be made as directed by the court and not prohibited by international agreement.”); *In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) (“plaintiffs are not required to first attempt service through the Hague Convention.”); *see also, Strabala v. Zhang*, 318 F.R.D. 81, 114 (N.D. Ill. 2016) (authorizing alternative service pursuant to Fed. R. Civ. P. 4(f)(3); *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 331-32 (S.D.N.Y. 2015) (same); *In re LDK Solar Secs. Litig.*, 2008 WL 2415186, *2 (N.D. Cal. Jun. 12, 2008) (same); *Williams-Sonoma Inc. v. Friendfinder Inc.*, 2007 WL 1140639, at *2 (N.D. Cal. Apr. 17, 2007) (same); *Levi Strauss & Co., v. Zhejiang Weidu Garment Co., Ltd. et al.*, No. 16-cv-7824 (N.D. Ill. Nov. 17, 2016) (same); *Nanya Tech. Corp. v. Fujitsu Ltd.*, 2007 WL 269087, *6 (D. Guam Jan. 26, 2007) (Hague Convention, to which Japan is a signatory, did not prohibit e-mail service upon Japanese defendant); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560,

562 (E.D. Tenn. 2004) (recognizing that, while “communication via e-mail and over the internet is comparatively new, such communication has been zealously embraced within the business community”). The Hague Convention does not itself preclude service by e-mail. Urbanczyk Decl. at ¶ 5; *See e.g., Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, 295 F.R.D. 259, 261 (S.D. Ohio 2013) (“[v]arious courts have agreed that service by email is not prohibited by the Hague Convention”); *Facebook, Inc. v. Banana Ads, LLC*, 2012 WL 1038752, at *3 (N.D. Cal. Mar. 27, 2012) (citing cases where courts held that service by e-mail did not violate the Hague Convention as to foreign defendants, including in China).

Court-directed electronic service pursuant to Rule 4(f)(3) is appropriate in this case where “there is a need for speed that cannot be met by following the Hague Convention methods...” because of the injunctive relief sought by Plaintiff, even if the Hague Convention did apply. *Strabala*, *citing*, 4B FED. PRAC. & PROC. CIV. § 1134 (4th ed.).

For the reasons set forth herein, Plaintiff respectfully requests this Court’s permission to serve Defendants via e-mail and electronic publication. In accordance with this request, the proposed Temporary Restraining Order includes authorization to serve Defendants electronically and provides for issuance of a single original summons¹ in the name of “The Partnerships and all other Defendants identified in the Complaint” that shall apply to all Defendants in accordance with Federal Rule of Civil Procedure 4(b).

Dated: July 16, 2023

Respectfully submitted,

/s/Adam E. Urbanczyk
Adam E. Urbanczyk

¹ The Advisory Committee Notes to the 1993 Amendment to Rule 4(b) states, “If there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.” Fed. R. Civ. P. 4(b) advisory committee notes (1993).

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